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2                   IN THE UNITED STATES DISTRICT COURT  
3                   FOR THE EASTERN DISTRICT OF CALIFORNIA  
4  
5

6 PATRICK O. FRANK.LIN,

7                   Plaintiff,

CV F 05 0520 OWW WMW P

8                   vs.

FINDINGS AND RECOMMENDATION

9  
10 HARRIS PHILLIPS, et al.,

11                   Defendants.

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14                 Plaintiff is a state prisoner proceeding pro se. Plaintiff seeks relief pursuant to 42  
15 U.S.C. § 1983. This proceeding was referred to this court by Local Rule 72-302 pursuant to 28  
16 U.S.C. § 636(b)(1).

17                 By order filed December 26, 2006, the court issued an order dismissing the  
18 operative complaint for failure to state a claim and directing plaintiff to file an amended  
19 complaint within thirty days. Plaintiff has not filed an amended complaint.

20                 In the December 26, 2006, order the court informed plaintiff of the deficiencies in  
21 his complaint, and dismissed the complaint on the ground that plaintiff had failed to state a claim  
22 upon which relief could be granted. Because plaintiff has not filed an amended complaint, the  
23 court recommends dismissal without prejudice, pursuant to Local Rule 11-110, for failure to  
24 obey a court order.

25                 Accordingly, IT IS HEREBY RECOMMENDED that this action be dismissed  
26

1 without prejudice for failure to obey a court order.

2 These findings and recommendations are submitted to the United States District  
3 Judge assigned to the case, pursuant to the provisions of Title 28 U.S.C. § 636 (b)(1)(B). Within  
4 twenty days after being served with these findings and recommendations, plaintiff may file  
5 written objections with the court. Such a document should be captioned “Objections to  
6 Magistrate Judge’s Findings and Recommendations.” Plaintiff is advised that failure to file  
7 objections within the specified time waives all objections to the judge’s findings of fact. See  
8 Turner v. Duncan, 158 F.3d 449, 455 (9<sup>th</sup> Cir. 1998). Failure to file objections within the  
9 specified time may waive the right to appeal the District Court's order. Martinez v. Ylst, 951  
10 F.2d 1153 (9th Cir. 1991).

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14 IT IS SO ORDERED.

15 **Dated:** January 29, 2007  
j14hj0

16 /s/ William M. Wunderlich  
UNITED STATES MAGISTRATE JUDGE